

Contract Change Agreement #3

This Contract Change Agreement #3 ("CCA#3") is executed by and between ERG Transit Systems (USA) Inc, a California corporation and wholly owned subsidiary of ERG Limited, an Australian corporation, (hereinafter referred to as the "Contractor") and each of the following seven public transportation agencies (hereinafter referred to individually as an "Agency" or collectively as the "Agencies"):

1. Central Puget Sound Regional Transit Authority ("Sound Transit")
2. King County ("King County")
3. Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
4. Pierce County Public Transportation Benefit Area ("Pierce Transit")
5. Snohomish County Public Transportation Benefit Area ("Community Transit")
6. City of Everett ("Everett")
7. State of Washington, acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

Background

- A. Effective April 29, 2003, each of the Agencies and the Contractor entered into Contract #229944 ("Contract") to implement a Regional Fare Coordination System ("RFC System") to establish a common fare system utilizing smart card technology. The Contractor is responsible for the development, implementation, operation and maintenance of the RFC System as specified in the Contract.
- B. In June of 2006, the Parties agreed to Contract Change Agreement #2 ("CCA#2") which included, among other provisions, a new Project Schedule and a number of Contract modifications related to Phase 1 testing, through the completion of the Beta Test.
- C. The Parties have engaged in extensive discussions about the results of the Beta Test, the lessons learned, the scope of revisions that need to be made before commencing revenue service, alternative approaches to conducting the development, testing, training and other Work of Phase 2, and the Schedule for Phase 2.

D. The purpose of this CCA#3 is to establish, subject to the terms hereof, the agreed changes to the Contract regarding Phase 2 activities and a new Project Schedule that will enable Parties to effectively plan and undertake the remaining RFCS implementation activities.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Contractor and the Agencies agree to the above Recitals and the following terms:

1.0 AMENDMENTS TO DIVISION I

The Agencies and the Contractor hereby agree, without further execution, to amend the Contract as provided in Amendment Twenty-three, a copy of which is attached hereto as "CCA#3-Attachment A." Said Amendment 23 modifies the following:

- a. Section 3.I-11, "Security of RFC System";
- b. Section 3.I-13, "System Backup and disaster Recovery/Business Resumption Plan"
- c. Section 3.I-27.5 (untitled)
- d. Section 3.I-76.3 "Payment Procedures and Schedules through Full System Acceptance"
- e. Exhibit 8, Project Schedule; and
- f. Exhibit 9, "Price Schedule", Section VI "Implementation"

2.0 Changes to Division II

The Agencies and the Contractor hereby agree, without further execution, to change Division II as provided in Change Order No. 26, a copy of which is attached hereto as "CCA#3- Attachment B."

3.0 Non-precedential Settlement of Additional Compensation for Project Management

The Contractor has sought additional compensation for project management costs alleged to have been incurred in relation to new Work added by certain Change Orders and the Agencies have objected that no such additional compensation is due. The Parties desire to avoid disputes over whether, and how much if any, additional compensation for project management may be due under the Contract as a result of the large amount of new Work being added under this CCA#3. Accordingly, the Parties have agreed, without any admissions or concessions but in the interests of compromise and settlement, that the amount added to the Price in Exhibit 9, Section VI (2) "Phase 2" is the full amount due for, and the Contractor hereby waives any Claims related to, any

and all new Work added by this CCA#3, including but not limited to any additional compensation for project management, through Full System Acceptance, as a result of any and all new Work added by this CCA#3. Provided, however, the Parties further agree that this compromise and settlement does not apply to, and shall not be construed as a controlling precedent for, any subsequent Change Orders.

4.0 Other Terms and Conditions

4.1 The following definitions shall apply to this Change Agreement.

- a. "Claims" means any claims, demands, suits, actions, Damages, expenses (including attorneys' fees and related costs whether or not litigation is commenced) and liabilities of any kind ("Claims"),
- b. "Damages" means any direct and indirect damages, including but not limited to increased direct and indirect costs, overhead, losses, delayed revenue receipts, loss of use, loss of time, loss of goodwill, inconvenience, commercial loss, lost profits or anticipated business savings, wasted management time or other indirect, incidental or consequential damages.
- c. "Future Delay(s)" means failure to timely complete a task with a "Finish" date after September 26, 2007(effective date of CCA#3), as specified in the New Project Schedule attached to this Agreement.
- d. "Past Delay(s)" means delay experienced prior to and through September 26, 2007(effective date of CCA#3);
- e. "Schedule Change" means the changes to the Project Schedule that are encompassed in the New Project Schedule that is attached to this Contract Change Agreement #3 in a high level outline and is subsequently approved by the Agencies in a consistent, fully-detailed version pursuant to Section 5.1 of Amendment Twenty-three, attached hereto as CCA#3-Attachment A, including (a) any Past Delays; (b) any changes in the time for the total Project Schedule, each Project and Payment Milestone and/or each listed task or activity; and (c) the past, present and future effects of Past Delays and said changes in the Project Schedule, including but not limited to any impacts, cumulative impacts, ripple effects, use of different means or methods, increased levels of effort, added resources, changed sequences, compressions, accelerations, demobilizations, inefficiencies, disruptions and other effects on the Contractor of same. The term "Schedule Change" does not include Future Delays and the impacts of Future Delays.

4.2 The Contractor, for and on behalf of itself, its parent corporation and their subcontractors, suppliers and any other person or entity supplying work or materials to the RFCS Project through them, forever and unconditionally releases and forever discharges the Agencies, each of them and their respective officials, employees, contractors and agents, from any and all Claims, known or unknown, arising out of, or related to, this Contract Change Agreement #3, its Attachments, the Schedule Change included therein, and any actual or constructive changes that occurred or began prior to the date of this Change Agreement. Without limiting the foregoing, this release and discharge shall include Claims for adjustment of time and compensation asserting that the Schedule Change caused or contributed to Damages. Provided, however, this release and discharge does not apply to Claims based on a Future Delay.

Notwithstanding the Contractor's release of Claims as provided herein, in the event the Agencies do not execute a release and assert their Claims, as described in Section 4.5, the Contractor, for and on behalf of itself, its parent corporation and their subcontractors, suppliers and any other person or entity supplying work or materials to the RFCS Project through them, reserves the right to use Agency-Caused Past Delays as offsets and/or defenses against any such Agency Claims, but agrees that Contractor may not obtain a net judgment based on such offsets and/or defenses.

4.3 The Contractor is responsible for negotiating and satisfying any and all subcontractor claims arising out of the Schedule Change on a full and final basis and shall defend, indemnify and hold harmless the Agencies from all such claims.

4.4 As provided in the Contract, the Agencies' approval of the New Project Schedule shall not constitute approval or acceptance of the Contractor's means, methods, sequencing, logic, order, precedence and succession of activities or Contractor's ability to complete the Work in a timely manner. This release and discharge does not apply to, and the Contractor remains responsible for, any mistakes, errors or omissions in any schedule, including, but not limited to, mistakes, errors or omissions of logic, order, precedence, and duration, except to the extent that any such mistakes, errors or omissions arise from information provided by the Agencies and except to the extent Contractor's performance is otherwise excused under the terms of the Contact.

4.5 The Agencies hereby reserve all Claims, rights and remedies they may have under the Contract or at law except to the extent provided in any previous written waiver and release. Provided, however, if the Contractor has done all things necessary to be issued a Notice of Apparent Completion (NAC) for the completion of Full System Acceptance by August 21, 2009, or such longer date resulting from agency-caused delay or a signed Change Order, the Agencies shall execute a release of any Claims they may have against the Contractor arising out of, or related to, this Change Agreement, its Attachments, and the Schedule Change included therein. In any event, however, said release and discharge would not apply to Claims based on a Future Delay.

4.6 Except as provided in Section 4.2, nothing in this Change Agreement shall be construed as a waiver, release or discharge of any party's rights under the Contract or at law with regard to another party's performance of its obligations under the Contract.

4.7 Except as expressly provided in this Change Agreement and its attachments, or in other executed Amendments and Change Orders, the provisions of the Contract shall remain in full force and effect without change, including but not limited to the provisions of Section 3.I-26, "Project Schedule for System Development Work", Section 3.I-27, "Progression of System Development Work", Section 3.I-33. "Contract Claims", and Section 3.I-34, "Dispute Review Board."

IN WITNESS WHEREOF, the parties hereto have executed this Contract Change Agreement #3.

ERG Transit Systems (USA) Inc.

By: _____
Its: _____
Date: _____

Central Puget Sound Regional Transit Authority

By: _____
Its: _____
Date: _____

King County

By: _____
Its: _____
Date: _____

Pierce County Public Transportation Benefit Area

By: _____
Its: _____
Date: _____

City of Everett

By: _____
Ray Stephanson, Mayor, or His Designee
Date: _____

ATTEST:

By: _____
Sharon Marks, City Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
Elmer E. "Ned" Johnston, City Attorney
Date: _____

Kitsap County Public Transportation Benefit Area

By: _____
Its: _____
Date: _____

**Washington State Ferries, Washington
State Department of Transportation**

By: _____
Its: _____
Date: _____

**Snohomish County Public
Transportation Benefit Area**

By: _____
Its: _____
Date: _____